



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 22, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 04, 2019 (the "Notice").

The Landlord attended the hearing. Nobody attended the hearing for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and evidence.

The Landlord testified that the hearing package and evidence were posted to the rental unit door yesterday. The Landlord testified that the Tenant has a pit bull that he leaves outside. I understood her to say that this makes it difficult to serve the Tenant. The Landlord testified that she tried to make appointments to see the Tenant, but he would not attend. The Landlord testified that the Tenant was home last night and got the package.

The Landlord confirmed she received the hearing package by email from the RTB to serve on the Tenant.

I told the Landlord I would decide about service in my written decision. I heard from the Landlord about the Notice. The Landlord testified that the Notice was hand delivered to the Tenant at the rental unit.

I also note that the Landlord submitted a Proof of Service for the Notice of Direct Request Proceeding showing she hand delivered this to the Tenant.

Section 59(3) of the *Residential Tenancy Act* (the “Act”) states:

(3) ...a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. [emphasis added]

Rule 3.1 of the Rules of Procedure (the “Rules”) states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet...provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch...

[emphasis added]

Rule 3.14 of the Rules states:

Except for evidence related to an expedited hearing...documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing...[emphasis added]

Section 89(2) of the *Act* sets out the permitted methods of service for the Application and states:

(2) An application by a landlord under section 55...must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1)...

I accept the undisputed testimony of the Landlord that she posted the hearing package and evidence on the door of the rental unit yesterday. I find the Tenant was served with the hearing package and evidence in accordance with sections 88(g) and 89(2)(d) of the *Act*.

The issue here is the timing of service. RTB records show the hearing package was emailed to the Landlord September 09, 2019 to serve on the Tenant. The Landlord was required to serve the hearing package and evidence on the Tenant by September 12, 2019. The Landlord did not do so. The Landlord served the Tenant more than a month and a half late.

More importantly, the Landlord did not serve the Tenant until the day before the hearing. I do not find the Landlord's verbal testimony that the Tenant was home October 31, 2019 and got the hearing package and evidence sufficient. The Tenant did not appear at the hearing. The Tenant did not submit evidence for the hearing. There is insufficient evidence before me to support the Landlord's verbal testimony that the Tenant received the hearing package and evidence October 31, 2019. I find the deeming provision in section 90(c) of the *Act* applies which would result in the Tenant being deemed to have received the hearing package and evidence November 03, 2019, after the hearing date.

I do not find it relevant that the Tenant would not attend meetings with the Landlord as the Landlord was permitted to post the package to the door of the rental unit, which is what the Landlord did. I do not accept that the Landlord could not have served the hearing package and evidence sooner given the Landlord was able to serve the hearing package and evidence by posting it on the door and was able to serve the Notice and Notice of Direct Request Proceeding to the Tenant by hand.

In the circumstances, I find the Landlord failed to comply with the *Act* and Rules in relation to the timing of service. I am not satisfied the Tenant received the hearing package and evidence October 31, 2019. In any event, I do not find service of the hearing package and evidence the day before the hearing sufficient. I do not accept that the Tenant would have had time to prepare for or appear at the hearing even if he received the hearing package and evidence October 31, 2019.

I am not satisfied of service of the hearing package or evidence and therefore dismiss the Application with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 01, 2019

Residential Tenancy Branch